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\*E-FILED 1/5/06\*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ASHOK LAL,  
Plaintiff,  
v.  
AMERICAN AIRLINES,  
Defendant.

NO. 5:05-cv-3080 RS

**ORDER GRANTING MOTION TO  
DISMISS FOURTH CLAIM AND  
DENYING MOTION TO DISMISS  
THIRD CLAIM**

I. INTRODUCTION

Defendant American Airlines ("American") moves to dismiss the third and fourth claims pled in the second amended complaint filed by plaintiff Ashok Lal ("Lal"), arguing that the amended pleading was not timely filed and that the fourth claim for relief fails to allege facts sufficient to state a claim for the negligent infliction of emotional distress. Lal opposes the motion and responds that he filed the amended complaint as soon as the Court's electronic filing system was available and argues that he has pled sufficient facts to state a claim for the negligent infliction of emotional distress. The motion was fully briefed and submitted on the papers pursuant to Civil L.R. 7-1(b). Based on all papers filed to date, the Court grants American's motion to dismiss Lal's fourth claim for relief since no facts are pled which suggest negligent conduct on the part of American, but denies the motion to dismiss the third claim for relief since the electronic filing system was unavailable until November 7, 2005, as explained below.

II. BACKGROUND

1 Since the complete factual background concerning this case was set forth in the Court's prior order  
2 granting American's motion to dismiss the third and fourth claims for relief with leave to amend, it will not be  
3 repeated here. Lal was employed by American as a Fleet Service Clerk at the San Jose International  
4 Airport for over 17 years. In January 2003, he experienced chest pains at work and sought treatment at  
5 Kaiser Permanente Hospital ("Kaiser"), where he was diagnosed with hypertension. Lal took medical  
6 leave and, thereafter, requested that he be permitted to return to work in a non-supervisory position in light  
7 of his medical condition. Despite his request for medical accommodation, Lal was informed by American  
8 that, upon his return to work, he would be reassigned to the San Francisco International Airport facility. Lal  
9 later filed a Workers' Compensation claim for industrial injury resulting in hypertension.

10 In the meantime, American told Lal that, before he could return to work, he must submit a  
11 completed *Medical Authorization Application for Sick Leave or Absence* form ("sick leave form") and  
12 a *Medical Psychiatric Information Request* form ("psychiatric form"). Although Lal returned the  
13 completed sick leave form to American, he never submitted the psychiatric form, claiming that he could not  
14 complete it because he was never treated for nor placed on medical leave for a psychiatric illness. As a  
15 result, on March 4, 2003, American terminated Lal's employment for failure to return the psychiatric form.  
16 Lal then filed this action, claiming wrongful termination and alleging claims for both intentional and negligent  
17 infliction of emotional distress.

18 In a prior motion to dismiss, American argued that Lal's claim for relief based on negligent infliction  
19 of emotional distress was insufficient since it pled only facts setting forth intentional actions. Moreover, with  
20 respect to his claim for intentional infliction of emotional distress, American argued that Lal failed to plead  
21 facts which, if proved, would show outrageous conduct by American. The Court agreed with American  
22 and, in an order issued on October 4, 2005, granted Lal thirty days to amend his claims for emotional  
23 distress. As a result, Lal's amended complaint was due on November 3, 2005.

24 On November 7, 2005, Lal filed an amended complaint. American again moves to dismiss the third  
25 and fourth claims for intentional and negligent infliction of emotional distress, respectively, noting that Lal  
26 failed to comply with the Court's order by filing the amended complaint after more than thirty days and  
27 arguing that the amended fourth claim for relief still fails to state facts which support a claim that American

engaged in negligent conduct towards Lal.

### III. STANDARDS

In ruling on a motion to dismiss, the Court must accept as true all allegations of material fact and must construe those allegations in the light most favorable to the non-moving party. Western Reserve Oil & Gas Co. v. New, 765 F.2d 1428, 1430 (9th Cir. 1985). Any existing ambiguities must be resolved in favor of the pleading. Walling v. Beverly Enterprises, 476 F.2d 393, 396 (9th Cir. 1973). The liberal pleading standards of the Federal Rules of Civil Procedure do not require the claimant to set out in detail the facts upon which the claim is based. Instead, Fed. R. Civ. P. 8(a) requires a claimant to set forth only a short and plain statement of the grounds upon which the court's jurisdiction depends, a short and plain statement of the claim showing that the plaintiff is entitled to relief, and a demand for judgment.

11 A complaint is subject to dismissal as a matter of law for: (1) lack of a cognizable legal theory or  
12 (2) insufficient facts stated under a cognizable theory. Robertson v. Dean Witter Reynolds, Inc., 749 F.2d  
13 530, 533-34 (9th Cir. 1984). In order to grant a motion to dismiss, it must appear to a certainty that a  
14 plaintiff would not be entitled to relief under any set of facts which could be proved. Wool v. Tandem  
15 Computers, Inc.

## IV. DISCUSSION

#### A. Timeliness of Amended Complaint

18       Although Lal acknowledges that his amended complaint was due on November 3, 2005, his  
19       counsel explains that she attempted to file the amended pleading electronically on that day but was unable  
20       to do so due to the fact that the system was not operational. In fact, it is correct that, due to an upgrading of  
21       the Court's electronic filing system, no party could file any documents from 3:00 p.m. on November 3,  
22       2005 until the following Monday morning, November 7, 2005. As a result, and pursuant to the provisions  
23       of General Order No. 45, which provide that if the electronic system becomes subject to a technical failure  
24       for a period of more than 24 hours, then any documents due to be filed shall become due on the next  
25       available business day following the technical failure, the amended complaint was timely filed on November  
26       7, 2005. Accordingly, American's motion to dismiss Lal's third and fourth claims for relief on the basis that  
27       they were not filed in a timely manner is denied.

#### B. Negligent Infliction of Emotional Distress

American also moves to dismiss Lal's fourth claim for relief, negligent infliction of emotional distress, arguing that the facts pled fail to allege any negligent conduct on the part of American. As the Court previously informed Lal, while he is permitted to plead negligence "in the alternative," that does not relieve him of the obligation to plead sufficient facts which delineate negligent conduct by American. Despite that admonition, Lal's amended complaint again pleads only intentional conduct alleged to have been committed by American. Moreover, the arguments advanced by Lal in opposition to this motion fail to address that deficiency. As a result, American's motion to dismiss Lal's fourth claim for relief without further leave to amend is granted.

## V. CONCLUSION

For the reasons stated above, the Court grants American's motion to dismiss Lal's fourth claim for relief without leave to amend since no facts are alleged which support a claim that American acted negligently towards Lal. The motion to dismiss Lal's third claim for relief is denied on the basis that such claim was timely filed since the Court's electronic filing system was not operational as of 3:00 pm on November 3, 2005.

IT IS SO ORDERED.

Dated: 1/5/06

/s/ Richard Seeborg  
RICHARD SEEBORG  
United States Magistrate Judge

1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER HAS BEEN DELIVERED TO:**

2 Margaret G. Akdeniz   mga@advancelegalgroup.com, inquire@advancelegalgroup.com

3 Paula Champagne   pchampagne@littler.com

4 Matthew J. Ruggles   mruggles@littler.com, gprevatt@littler.com

5 **Dated: 1/5/06**

**Chambers of Judge Richard Seeborg**

6  
7 **By:** /s/ BAK